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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,895	03/08/2002	Hiroshi Sukegawa	220515US2S	2724
22850	7590	11/28/2006	EXAMINER	
C. IRVIN MCCLELLAND OBLON, SPIVAK, MCCLELLAND; MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			POND, ROBERT M	
			ART UNIT	PAPER NUMBER
			3625	

DATE MAILED: 11/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/092,895

**Applicant(s)**

SUKEGAWA, HIROSHI

**Examiner**

Robert M. Pond

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3,4 and 6-50 is/are pending in the application.
- 4a) Of the above claim(s) 6-46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,4 and 47-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

The Applicant amended claim 1 with subject matter from canceled claim 5. All pending claims 1, 3, 4, and 47-50 were examined in this final action.

### ***Response to Arguments***

Applicant's arguments filed 13 July 2006 have been fully considered but they are not persuasive. Spagna disclosing sending usage reports on periodic basis. Purpose of report is to reflect latest usage.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

- 1. Claims 1, 3 - 5 and 47 - 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spagna (US 6,587,837) in view of Ginter (US 5,892,900).**

Regarding claim 1, Spagna teaches a music distribution method comprising:

receiving by a server a request to distribute music information from a music reproduction apparatus through a communication medium (see at least

Abstract, Col 2, lines 58 - 64, Col 28, lines 66 - 67, Col 82, lines 24 - 34 and Figures 5 - 7);

generating by said server a distribution file in which said music information requested and information concerning settings and conditions required for transmitting information from said music reproduction apparatus to said server are integrated; distributing by said server said distribution file to said music reproduction apparatus through said communication medium (see at least Col 5, lines 9 - 42 and Figure 13);

receiving by said server through said communication medium a number of times of reproduction with attribution of said music information reproduced by said music reproduction apparatus (see at least Col 4, lines 26 - 32, Col 13, lines 31 - 37 and Col. 23, lines 50 - 52); and

identifying a copyright holder to whom a copyright fee should be paid based on said music information reproduced by said music reproduction apparatus, and paying said copyright fee (see at least Col 10, lines 22 - 24, Col 11, lines 8 - 16 and 26 - 34, Col 15, lines 44 - 51 and Col 90, lines 38 - 40).

Regarding Claim 5, a music reproduction method, wherein said server receives the appreciation records including said number of times of reproduction of said music information at regular intervals (Col 4, lines 26 - 32, Col 13, lines 31 - 37 and Col 23, lines 50 - 52). Please note: sends usage reports on periodic basis. Purpose of report is to reflect latest usage.

However, Spagna does not specifically disclose and teach a method for music distribution including registering a music reproduction apparatus specified by a listener who pays a fixed membership fee; and distributing a payment to a copyright holder who holds a copyright of said music information, in accordance with the appreciation records, the payment being drawn from the membership fee paid by the listener. On the other and in the same area of distributing content such as music, Ginter teaches a method for music distribution including registering a music reproduction apparatus specified by a listener who pays a fixed membership fee (see at least Abstract, Col 1, lines 58 - 62, Col 2, lines 20 - 32, Col 7, lines 13 - 19, Col 179, 58 - 67, Col 140, lines 25 - 43 and 62 - 67 and Col 341, lines 19 - 23 and Figure 2); and distributing a payment to a copyright holder who holds a copyright of said music information, in accordance with the appreciation records, the payment being drawn from the membership fee paid by the listener (see at least Col 20, lines 23 - 43, Col 24, lines 24-53, Col 135, lines 44 - 52, Col 140, lines 25 -43, Col 308, lines 1 - 24 and Col 312, lines 28 - 32).

It would have been obvious to one of ordinary skill in the art at the time to have provided the method of Spagna with the method of Ginter to have enabled a method as recited in claim 1. Spagna discloses teaches a music distribution method comprising: receiving by a server a request to distribute music information from a music reproduction apparatus through a communication

medium; generating by said server a distribution file in which said music information requested and information concerning settings and conditions required for transmitting information from said music reproduction apparatus to said server are integrated; distributing by said server said distribution file to said music reproduction apparatus through said communication medium; receiving by said server through said communication medium a number of times of reproduction with attribution of said music information reproduced by said music reproduction apparatus; and identifying a copyright holder to whom a copyright fee should be paid based on said music information reproduced by said music reproduction apparatus, and paying said copyright fee (see at least Abstract, Col 2, lines 58-64, Col 5, lines 9-42, Col 11, lines 8- 16 and Figure 13). In turn, Ginter discloses a music distribution method comprising: registering a music reproduction apparatus specified by a listener who pays a fixed membership fee; and distributing a payment to a copyright holder who holds a copyright of said music information, in accordance with the appreciation records, the payment being drawn from the membership fee paid by the listener (see at least Abstract, Col 20, lines 23 - 43, Col 24, lines 24 - 53, Col 135, lines 44 - 52, Col 140, lines 25 -43, Col 308, lines 1 - 24 and Col 312, lines 28 - 32 and Figure 2). Thereby, one of ordinary skill in the art would have been motivated to extend the method of Spagna with a method for music distribution comprising: registering a music reproduction apparatus specified by a listener who pays a fixed membership fee; and distributing a payment to a copyright holder who holds

a copyright of said music information, in accordance with the appreciation records, the payment being drawn from the membership fee paid by the listener. In this manner, the method will accommodate several different business models, which will increase application to various solutions for distributing music and thereby too increase the potential additional revenue for this method.

Regarding Claim 3 (original), Spagna teaches a music distribution method, wherein said communication medium is the Internet (Col 25, line 36).

Regarding Claim 4, Spagna teaches a music distribution method, wherein said information concerning said settings and conditions includes an Internet IP address required for reporting said number of times of reproduction of said music information from said music reproduction apparatus to said server (Col 4, lines 22 - 23).

Regarding Claim 47, Spagna teaches a music reproduction method, wherein said music information distributed to said music reproduction apparatus is stored in a nonvolatile semiconductor memory in said music reproduction apparatus and Claim 48 wherein said nonvolatile semiconductor memory includes a flash memory (Col 22, line 23). Please note that Spagna does not specifically disclose nonvolatile nor flash memory. However, Spagna does disclose memory. Moreover, these types of memory were old and well known at the time of the applicant's invention. Thereby, one of ordinary skill would have been motivated to extend the memory types of Spagna with nonvolatile and flash to ensure that content is not lost, which has been saved.

Regarding Claim 49 and related claim 50, Spagna teaches a music distribution method, wherein said distribution file has a header information portion and a main body information portion arranged under said header information portion, and a structure in which said information concerning settings and conditions are recorded in said header information portion, and said music information is recorded in said main body information portion (Col 20, lines 14 - 59 and Col 29, lines 4 - 14).



***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. Pond whose telephone number is 571-272-6760. The examiner can normally be reached on 8:30AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Jeff Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Robert M. Pond', is positioned above the printed name.

Robert M. Pond  
Primary Examiner  
November 24, 2006